

REMARKS

Claims 1-23 are pending. No new matter has been added by way of the present amendments. For instance, claims 1, 2, 18, 19 and 22 have been amended to explain that the polyester layer comprises a polymer that enters a secondary phase transition stage when heated to a temperature which is approximately the same as a sublimation temperature of the sublimation dye. This limitation is supported by the present specification at, for example, page 3, lines 17-22. Claims 1, 2, 18, 19 and 22 have also been amended to explain that the barrier layer allows for cold release of said sublimation dye and said polyester layer from said support after heat transfer. This limitation is supported by the present specification at, for example, page 6, lines 3-6 and 15-16 and page 9, lines 19-21. Claim 22 has also been amended to replace "polyester layer" with "polyester material." Lastly, new claim 23 is supported by the present specification at page 10, line 26 to page 11, line 12. Accordingly, no new matter has been added.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 1-22 under 35 U.S.C. § 112, second paragraph for the reasons recited at pages 6-7 of

the outstanding Office Action. Applicants respectfully traverse.

The Examiner asserts that the intended scope of the terms "polyester layer" or polyester material" is indefinite. That is, the Examiner asserts that whereas the alleged "traditional" definition of "polyester" relates to condensation products of diols and diacids, the present specification appears to include products such as acrylic polymers and products made from ethylenically unsaturated monomers within the definition of "polyester."

Applicants submit that although the "traditional" definition of a "polyester" may be as described by the Examiner, those of skill in the relevant art apply a broader definition to what types of materials are encompassed by the term "polyester." That is, within the relevant industry, the term "polyester" refers to a category of polymer whose monomer components contain an ester functional group. As evidence, the Examiner is referred to a printout of a web page describing just such a definition of polyester. In particular, the Examiner is referred to <http://encyclopedia.thefreedictionary.com/polyester> wherein the term "polyester is described as "Polyester is a category of polymer whose monomer contains the ester functional group."

Accordingly, Applicants submit that the terms "polyester layer" or "polyester material" are not indefinite and those of

skill in the art fully understand the metes and bounds of these terms to be in accord with the description of the present application. Reconsideration and withdrawal of this rejection are requested.

The Examiner has also rejected claim 22 under 35 U.S.C. § 112, second paragraph asserting that there is insufficient antecedent basis for the term "polyester layer." Applicants traverse and submit that this term has been replaced with "polyester material" for which sufficient antecedent basis exists. Reconsideration and withdrawal of this rejection are requested.

Issues under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-22 under 35 U.S.C. § 103(a) as being obvious over the combination of EP 0 351 085 A2 (hereinafter EP '085) or DeVries et al., U.S. Patent No. 4,021,591 (hereinafter DeVries '591), both in view of Coleman, U.S. Patent No. 5,741,387 (hereinafter Coleman '387) and Agler et al., U.S. Patent No. 6,358,660 (hereinafter Agler '660). Applicants respectfully traverse this rejection.

First, Agler '660 is not valid prior art under 35 U.S.C. § 103(a). Agler '660 issued on March 19, 2002, was filed on April 21, 2000 and claims priority to U.S. Provisional Applications 60/130,500, filed April 23, 1999 and 60/133,861, filed May 12, 1999. The present application, filed March 29, 2002, was filed

as a U.S. National Phase application of PCT/US00/26796, filed September 29, 2000, and claims priority to U.S. Provisional Application No. 60/16,593, filed September 29, 1999. Both Agler '660 and the present application were, at the time the present invention was made, subject to an obligation of assignment to the same entity, that is, Foto-Wear, Inc.

Agler '660 qualifies as prior art under 35 U.S.C. § 102(e)/103(a) only. However, under the AIPA, 35 U.S.C. § 103(c) has been amended to include prior art under 35 U.S.C. § 102(e). In particular, 35 U.S.C. § 103(c), as amended, provides that:

Subject matter developed by another person, which qualifies as prior art only under subsection (e), (f) or (g) of Section 102 of this title shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

As evidence of common ownership at the time the invention was made, Applicant is providing herewith copies of the recorded Assignments for both the present application as well as the application which led to the Agler '660 patent.

In view of the above, Agler '660 has been removed as prior art under § 103(a)/102(e). Accordingly, the Examiner's rejection, which relies on Agler '660 is improper and should be withdrawn.

However, besides the fact that Agler '660 is not prior art, additional distinctions between the cited art and the presently

claimed subject matter exist. For instance, the present invention relates to, among other things, an image transfer sheet containing a support, a barrier layer, a dye sublimation ink layer and a polyester layer.

Heat-activated sublimation dyes have previously been successfully applied only to polyester-containing materials, such as polyester or cotton/polyester blend T-shirts. This is due to the fact that polyesters enter a secondary phase transfer stage when heated to approximately the same temperature at which a dye sublimates, thereby allowing the dye to diffuse into the polyester material. When cooled, the sublimation dye locks into the polyester material. Cotton, for example, does not enter this secondary phase transition stage, and heretofore it has not been possible to apply heat-activated sublimation dyes to 100% cotton fabrics.

The present invention solves this problem in the art by delivering a material to the receptor element which provides a medium by which heat-activated sublimation dyes can penetrate and adhere to a surface not inherently capable of imaging with dye sublimation inks. In order to more clearly reflect the nature of the "polyester" layer (or material) of the present invention, Applicants have amended the relevant independent claims to reflect that the polyester layer comprises a polymer that enters a secondary phase transition stage when heated to a temperature which is approximately the same as a sublimation

temperature of the sublimation dye in the adjacent layer. This is one aspect of the present invention which enables application of sublimation dyes to non-polyester materials. Also, the present barrier layer allows for a cold release of the sublimation dye and the polyester layer from the support after heat transfer. Cold release is discussed in the present specification at, for example, page 6, lines 13-18 and page 9, lines 17-21.

The ability and recognition of a combination an image transfer sheet having a support, a barrier layer, a dye sublimation ink layer and a polyester layer as defined by the present claims is absent from the cited art, whether taken individually or in combination as suggested by the Examiner. As such, even ignoring the fact that Agler '660 is not prior art, the Examiner has failed to present a valid *prima facie* case of obviousness. Reconsideration and withdrawal of this rejection are respectfully requested.

The Examiner has also rejected claims 1-12 and 18-22 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over DeVries '591. Applicants respectfully traverse this rejection.

DeVries '591 fails to suggest or disclose an image transfer sheet containing a support, a barrier layer, a dye sublimation ink layer and a polyester layer, wherein the polyester layer comprises a polymer that enters a secondary phase transition

stage when heated to a temperature which is approximately the same as a sublimation temperature of the sublimation dye in the adjacent layer. DeVries '591 further fails to suggest or disclose a barrier layer allows for cold release of the sublimation dye and the polyester layer from the support after heat transfer.

The Examiner has asserted that DeVries '591 discloses a support, release layer, design of sublimable dye and heat transferable polymeric layer. First, there is no indication in DeVries '591 that the "polymeric layer" comprises a polymer that enters a secondary phase transition stage when heated to a temperature which is approximately the same as a sublimation temperature of the sublimation dye in the adjacent layer. Second, although the Examiner asserts that the "release" layer of DeVries '591 corresponds to the present barrier layer, Applicants respectfully disagree. The "release" layer of DeVries '591 is described as follows:

The release layer 14 must be formed of a material which is solid at room temperature and which when heated to the temperatures normally encountered during heat release application of the dry release sublimation transfer of the invention, will soften so that the backing sheet 12 may be easily removed from the remainder of the transfer after application of the transfer to the substrate to be decorated. (see column 4, lines 1-9 of DeVries '591).

However, whereas the "release" layer of DeVries '591 must be soft when the backing sheet is removed, the "barrier" layer according to the present claims which allows for cold release of

the sublimation dye and the polyester layer from the support after heat transfer. This aspect of the present invention is neither disclosed nor suggested by DeVries '591. Accordingly, the Examiner has failed to present a valid *prima facie* case of obviousness. Reconsideration and withdrawal of this rejection are requested.

In view of the above, Applicants respectfully submit that the present claims are in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie (Reg. No. 42,874) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Applicants hereby respectfully petitions for one (1) month extension of time for the filing of the present paper in accordance with the provisions of 37 C.F.R. § 1.136 and 37 C.F.R. § 1.17. The required small entity fee of \$55.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

Marc S. Weiner, #32,181
Craig A. McRobbie, #42,874

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Attachments: Copy of web page
<http://encyclopedia.thefreedictionary.com/polyester>

Copy of assignments from U.S. Patent No.
6,358,660 and present application



⌂ Dictionaries: ☒ General ☐ Computing ☐ Medical ☐ Legal ☐ Encyclopedia

Polyester

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Polyester Resin Supplier: Reichhold

Reichhold and parent DIC comprise one of the world's largest producers of unsaturated **polyester** resins for composites applications.

The Adhesives and Sealants Platform

Get free and rapid solutions to your specific **polyester** from a network of adhesion experts directly at your desk. Try Techdirect, it's free and easy.

Polyester Fiberfill, Quilt Batting

Quilt batting, fiberfill, poly-pellets, high loft batting, low loft batting, Buy in bulk amounts and save. 10 major manufacturing companies.

Polyester is a category of polymer whose monomer contains the ester functional group. Polyesters fibers are often used to make fabric.

Liquid crystalline polyesters are among the first industrially used liquid crystalline polymers. In general they have extremely good mechanical properties and are extremely heat resistant. For that reason, they can be used as an abradable seal in jet engines.

Some articles mentioning "Polyester":

Composite material	Gel (theater)	GRP	Microfilm	Synthetic fiber
Condensation reaction	Georgepantz	Ingeo	Mylar	Synthetic fibers
Fiber	Glass reinforced plastic	Mackintosh	Plush	Trex (Composite Material)
Fibre	Glass-reinforced plastic	Microfiche	Reversal film	Vinyon

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Polydispersity (enc.)	Polyedrous	polyester fiber	polyfoam
Polydispersity index (enc.)	Polyeidic	polyestrous	Polyfoil
Polydivisible number (enc.)	Polyeidism	Polyethene (enc.)	Polygala
Polydor (enc.)	polyelectrolyte	Polyethylene	Polygala alba
Polydor Records (enc.)	Polyembryonate	Polyethylene (enc.)	Polygala lutea
Polydora (enc.)	Polyembryonic	Polyethylene glycol (enc.)	Polygala paucifolia
Polydore Vergil (enc.)	Polyembryony	Polyethylene oxide (enc.)	Polygala senega
Polydore Virgil (enc.)	Polyene (enc.)	Polyethylene terephthalate	Polygala vulgaris
Polydorus (enc.)	Polyergus	(enc.)	Polygalaceae
Polyedron	Polyergus rufescens	Polyface Farm (enc.)	Polygalaceous
		Polyfidelity (enc.)	

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RECORDATION DATE: 12/18/2002

REEL/FRAME: 013603/0936
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

HARE, DONALD S.

DOC DATE: 12/12/2002

ASSIGNOR:

WILLIAMS, SCOTT A.

DOC DATE: 12/12/2002

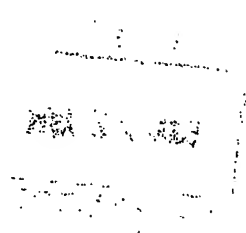
ASSIGNEE:

FOTO-WEAR, INC.
10 BUIST ROAD
MILFORD, PENNSYLVANIA 18337

SERIAL NUMBER: 10089446
PATENT NUMBER:

FILING DATE: 12/18/2002
ISSUE DATE:

ALLYSON PURNELL, EXAMINER
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BIRCH, STEWART, KOLASCH & BIRCH, LLPUNITED STATES PATENT RIGHTS, OR
UNITED STATES PLUS ALL FOREIGN PATENT RIGHTS**ASSIGNMENT**Application No. 10/089,446Filed March 29, 2002Insert Name(s)
of Inventor(s)*****(Given Name FAMILY NAME (ALL CAPS))*****WHEREAS, Donald S. HARE Scott A. WILLIAMSInsert Title
of InventionDYE SUBLIMATION THERMAL TRANSFER PAPER AND TRANSFER METHOD

for which an application for Letters Patent of the United States of America has been executed by the undersigned (except in the case of a provisional application).

Insert Date
of Signing of
Application

on _____; and

Insert Name
of AssigneeWHEREAS, FOTO-WEAR, INC.Insert Address
of Assigneeof 10 Buist Road, Milford, PA 18337

its heirs, successors, legal representatives and assigns (hereinafter designated as the Assignee) is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent(s) that may be granted therefor in the United States of America and

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NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration, the undersigned has (have) sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee the full and exclusive right to the said invention in the United States of America, its territories, dependencies and possessions and the entire right, title and interest in and to any and all Letters Patent(s) which may be granted therefor in the United States of America, its territories, dependencies and possessions, and if the box above is designated, in any and all foreign countries;

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The undersigned agree(s) to execute all papers necessary in connection with this application and any continuing, divisional, conversion or reissue applications thereof and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

The undersigned agree (s) to execute all papers necessary in connection with any interference which may be declared concerning this application or continuation, division, conversion or reissue thereof or Letter Patent(s) or reissue patent issued thereon and to cooperate with the Assignee in every way possible in obtaining and producing evidence and proceeding with such interference.

The undersigned agree(s) to execute all papers and documents and to perform any act which may be necessary in connection with claims or provisions of the International Convention for the Protection of Industrial Property or similar agreements.

The undersigned agree(s) to perform all affirmative acts which may be necessary to obtain a grant of a valid United States of America patent(s) or a grant of a valid United States of America and any foreign patent(s) to the Assignee and to vest all rights therein hereby conveyed to said Assignee as fully and entirely as the same would have been held by the undersigned if this Assignment and sale had not been made.

The undersigned hereby authorize(s) and request(s) the Patent and Trademark Office Officials in the United States of America and in any foreign countries to issue any and all Letters Patents resulting from said application or any continuing, divisional conversion or reissue applications thereof to the said Assignee, as Assignee of the entire interest, and hereby covenants that he has (they have) the full right to convey the entire interest herein assigned, and that he has (they have) not executed, and will not execute, any agreement in conflict herewith.

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In witness whereof, executed by the undersigned on the date(s) opposite the undersigned name(s).

Date _____,

Name of Inventor _____
(signature) Donald S. HARE

Date 12/12/02,

Name of Inventor Scott A. Williams
(signature) Scott A. WILLIAMS

Date _____,

Name of Inventor _____
(signature)

Date _____,

Name of Inventor _____
(signature)

Date _____,

Name of Inventor _____
(signature)

Date _____,

Name of Inventor _____
(signature)

BIRCH, STEWART, KOLASCH & BIRCH, LLPUNITED STATES PATENT RIGHTS, OR
UNITED STATES PLUS ALL FOREIGN PATENT RIGHTS**ASSIGNMENT**Application No. 10/089,446Filed March 29, 2002Insert Name(s)
of Inventor(s)*****(Given Name FAMILY NAME (ALL CAPS))*****WHEREAS, Donald S. HARE Scott A. WILLIAMS

(hereinafter designated as the undersigned) has (have) invented certain new and useful improvements in

Insert Title
of InventionDYE SUBLIMATION THERMAL TRANSFER PAPER AND TRANSFER METHOD

for which an application for Letters Patent of the United States of America has been executed by the undersigned (except in the case of a provisional application).

Insert Date
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on _____; and

Insert Name
of AssigneeWHEREAS, FOTO-WEAR, INC.Insert Address
of Assigneeof 10 Buist Road, Milford, PA 18337

its heirs, successors, legal representatives and assigns (hereinafter designated as the Assignee) is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent(s) that may be granted therefor in the United States of America and

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NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration, the undersigned has (have) sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee the full and exclusive right to the said invention in the United States of America, its territories, dependencies and possessions and the entire right, title and interest in and to any and all Letters Patent(s) which may be granted therefor in the United States of America, its territories, dependencies and possessions, and if the box above is designated, in any and all foreign countries:

and to any and all divisions, reissues, continuations, conversions and extensions thereof for the full term or terms for which the same may be granted.

Attorney Docket No. 0175-0285P

The undersigned agrees(s) to execute all papers necessary in connection with this application and any continuing, divisional, conversion or reissue applications thereof and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

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In witness whereof, executed by the undersigned on the date(s) opposite the undersigned name(s).

Date <u>12/12/02</u>	Name of Inventor <u>Donald S. Hare</u> (signature) Donald S. HARE
Date _____	Name of Inventor _____ (signature) Scott A. WILLIAMS
Date _____	Name of Inventor _____ (signature)
Date _____	Name of Inventor _____ (signature)
Date _____	Name of Inventor _____ (signature)
Date _____	Name of Inventor _____ (signature)



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RECORDATION DATE: 08/28/2000

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NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
HERMETET AGLER, ANNE

DOC DATE: 05/09/2000

ASSIGNOR:
REID, HEATHER

DOC DATE: 05/09/2000

ASSIGNOR:
WILLIAMS, SCOTT

DOC DATE: 05/09/2000

ASSIGNEE:
FOTO-WEAR, INC.
101 POCONO DRIVE
MILFORD, PENNSYLVANIA 18337

SERIAL NUMBER: 09557173
PATENT NUMBER:

FILING DATE: 04/21/2000
ISSUE DATE:

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ASSIGNMENT

Application No. NewFiled April 21, 2000Insert Name(s)
of Inventor(s)WHEREAS, Anne HERMETET AGLERHeather REIDScott WILLIAMS

(hereinafter designated as the undersigned) has (have) invented certain new and useful improvements in

Insert Title
of InventionCOATED TRANSFER SHEET COMPRISING A THERMOSETTING OR UV CURABLE MATERIAL

for which an application for Letters Patent of the United States of America has been executed by the undersigned (except in the case of a provisional application).

Insert Date
of Signing of
Applicationon May 9, 2000; andInsert Name
of AssigneeWHEREAS, FOTO-WEAR, INC.Insert Address
of Assigneeof 101 Pocono Drive, Milford, Pennsylvania 18337

its heirs, successors, legal representatives and assigns (hereinafter designated as the Assignee) is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent(s) that may be granted therefor in the United States of America and

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The undersigned agree(s) to execute all papers and documents and to perform any act which may be necessary in connection with claims or provisions of the International Convention for the Protection of Industrial Property or similar agreements.

The undersigned agree(s) to perform all affirmative acts which may be necessary to obtain a grant of a valid United States of America patent(s) or a grant of a valid United States of America and any foreign patent(s) to the Assignee and to vest all rights therein hereby conveyed to said Assignee as fully and entirely as the same would have been held by the undersigned if this Assignment and sale had not been made.

The undersigned hereby authorize(s) and request(s) the Patent and Trademark Office Officials in the United States of America and in any foreign countries to issue any and all Letters Patents resulting from said application or any continuing, divisional conversion or reissue applications thereof to the said Assignee, as Assignee of the entire interest, and hereby covenants that he has (they have) the full right to convey the entire interest herein assigned, and that he has (they have) not executed, and will not execute, any agreement in conflict herewith.

The undersigned hereby grant(s) the law firm of Birch, Stewart, Kolasch & Birch, LLP the power to insert on this Assignment any further identification which may be necessary or desirable in order to comply with the rules of the U.S. Patent and Trademark Office for recordation of this document.

The undersigned hereby covenant(s) that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

In witness whereof, executed by the undersigned on the date(s) opposite the undersigned name(s).


Date 05-09-00

Name of Inventor 
(signature) Anne HERMETET AGLER

Date 05-09-00

Name of Inventor 
(signature) Heather REID

Date 5/9/00

Name of Inventor 
(signature) Scott WILLIAMS

Date _____

Name of Inventor _____
(signature)

Date _____

Name of Inventor _____
(signature)

Date _____

Name of Inventor _____
(signature)

October 1998